

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A23-1630**

In re the Marriage of:

Jesse A Freking, petitioner,  
Respondent,

vs.

Audra Jo Freking nka Audra Jo Buxengard,  
Appellant,

County of Nobles,  
Respondent.

**Filed August 26, 2024  
Affirmed  
Slieter, Judge**

Nobles County District Court  
File No. 53-FA-15-185

Maryellen Suhrhoff, Muske, Muske & Suhrhoff, Ltd., Windom, Minnesota (for respondent  
Jesse A. Freking)

Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Braden Hoefert, Nobles County Attorney, Worthington, Minnesota (for respondent county)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Smith,  
Tracy M., Judge.

## NONPRECEDENTIAL OPINION

SLIETER, Judge

On appeal after remand in this marital-dissolution proceeding, appellant argues that the district court's allocation of property and debts is not fair and equitable. Because the district court's allocation of property and debts was within its discretion, we affirm.

### FACTS

Appellant Audra Jo Buxengard<sup>1</sup> and respondent Jesse A. Freking married in 2004. Freking sought marriage dissolution in 2015. The district court dissolved the parties' marriage in 2016, reserving issues of custody, parenting time, property division, and liability for a later trial. Following the 2017 trial on the disputed issues, the district court entered a judgment and decree. Freking appealed and this court reversed and remanded for additional findings related to the division of marital property and debts. *Freking v. Buxengard*, No. A18-0250, 2018 WL 6273393 (Minn. App. Dec. 3, 2018).<sup>2</sup>

An evidentiary hearing was held on the remanded issues related to the homestead valuation, valuation of the two semitrucks and trailers awarded to Buxengard, and allocation of the debt owed to the Internal Revenue Service (IRS).

In April 2022, the district court entered a judgment dividing property and debts. The district court determined that Buxengard had a \$1,003 nonmarital interest in the homestead, and it awarded the homestead to Buxengard subject to all existing mortgages.

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<sup>1</sup> Formerly known as Audra Jo Freking.

<sup>2</sup> This court also affirmed the physical custody of the children and parenting time for two of the children. *Id.*

The district court found that, because the semitrucks and trailers were awarded to Buxengard and that she benefitted from the sale of those items, the sale amount would be credited to her. The district court also found that the IRS debt for unpaid payroll taxes was incurred while Buxengard was working as the company's bookkeeper and determined that the parties were responsible for equal shares of that debt.

Buxengard moved for amended findings, claiming personal property was improperly omitted from the district court's property division, challenging the district court's treatment of the sale of the semitrucks and trailers, and arguing that Freking should be solely responsible for the IRS debt. The district court issued an amended order granting in part and denying in part Buxengard's request for amended findings.

Buxengard appeals.

## **DECISION**

"Upon a dissolution of a marriage, . . . the [district] court shall make a just and equitable division of the marital property." Minn. Stat. § 518.58, subd. 1 (2022). We will affirm a district court's "division of property if it had an acceptable basis in fact and principle even though this court may have taken a different approach." *Servin v. Servin*, 345 N.W.2d 754, 758 (Minn. 1984).

Buxengard claims that the property and debt allocation is not fair or equitable.

### ***Property***

"A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted). A district court abuses its

discretion if its findings are unsupported by the evidence, if it does not properly apply the law, or if its decision goes against logic and the facts on the record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

Buxengard argues that the district court failed to make findings to support its valuation of the property, which was contrary to the property values stipulated by the parties. We are not persuaded.

A district court's valuation of property is a finding of fact. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). Appellate courts will not set aside a finding of fact unless the finding is clearly erroneous. Minn. R. Civ. P. 52.01; see *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (applying rule 52.01 in family-law appeal). The clear-error standard of review "is a review of the record to confirm that evidence exists to support the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021).

When applying the clear-error standard of review, appellate courts (1) view the evidence in the light most favorable to the findings; (2) do not reweigh the evidence; (3) do not find their own facts; and (4) do not reconcile conflicting evidence. *Id.* at 221-22. Thus,

an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

*Id.* at 222 (quotations omitted); *see Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (citing *Kenney* in family-law appeal); *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (discussing clear-error standard of review). The record supports the district court’s valuation of the property. “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted).

### **1. Homestead**

Buxengard challenges the district court’s treatment of the homestead, claiming she has no equity in the home and noting that it is encumbered by mortgages. Buxengard has not, however, identified whether the district court erred by adopting the stipulated values, in calculating her nonmarital interest, or in its subsequent allocation of debt associated with the homestead. “[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.” *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944).

The district court found that the homestead was valued at \$52,000 at the time of marriage, and that the homestead was valued at \$63,000 at the valuation date, consistent with the values to which the parties stipulated. Because Buxengard bought the home before the parties married, the district court applied the modified *Schmitz*<sup>3</sup> formula to determine Buxengard’s nonmarital interest in the home. *See Antone*, 645 N.W.2d at 102 (explaining the *Schmitz* method of determining the marital and nonmarital interests of property). The

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<sup>3</sup> *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981).

district court determined that Buxengard's nonmarital interest in the home was \$1,003.89. The district court's finding is supported by the record and is, therefore, not clearly erroneous. The district court also acted within its discretion by crediting Buxengard with that interest in its asset allocation. *See id.* at 103-04 (noting that a person retains their nonmarital interest in a homestead despite increasing the marital debt secured by the homestead).

## **2. Semitrucks and Trailers**

Buxengard argues that the district court abused its discretion by deviating from the appraised value of the semitrucks and trailers as stipulated by the parties and crediting to her the full value of the sale because she did not actually receive the proceeds from the sale of the items.

The district court found that the value of the semitrucks and trailers was equal to their sale proceeds. At the evidentiary hearing following remand, Buxengard testified that she sold the semitrucks and trailers to repay a loan from her parents for attorney fees and she agreed that her "obligation to [her] parents ha[d] been reduced by the equity after the sale of the two semis and the trailer." In its order, the district court noted that Buxengard sold the semitrucks and trailers for more than their appraised value and found that "the actual sale price is more accurate than the stipulated amount." Thus, the district court's valuation is supported by the record and its findings are, therefore, not clearly erroneous. And, because Buxengard benefitted from the sale of the semitrucks and trailers by paying off the loan to her parents, the district court acted within its discretion by accounting for the sale proceeds in its allocation of assets that were received by Buxengard.

### 3. Other Property

Buxengard claims that the district court failed to allocate certain items of small machinery/equipment, insurance proceeds, and a washing machine. Because the record supports the district court's findings that these items no longer are in the possession of either party, it acted within its discretion by not allocating these items.

#### *Debt*

"A [district] court's apportionment of marital debt is treated as a property division and reviewed under the abuse of discretion standard." *Berenberg v. Berenberg*, 474 N.W.2d 843, 848 (Minn. App. 1991), *rev. denied* (Minn. Nov. 13, 1991).

We previously remanded two issues involving the parties' debts to district court for additional findings. *Freking*, 2018 WL 6273393 at \*9-10. The first issue was "that the district court erred by allocating the entire [Farm Service Agency (FSA)] debt to [Freking] without making any explanatory findings." *Id.* at \*9. On remand, Freking agreed to assume the FSA debt and that is not part of this appeal. The second issue involved IRS debt related to unpaid payroll taxes by Central Pacific Express Inc. (CPE), Freking's partially owned, now-dissolved trucking corporation.<sup>4</sup> We remanded the IRS issue to the district court because "the district court made no findings to explain its rationale for allocating the entire IRS debt to [Freking]." *Id.* at \*10.

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<sup>4</sup> We take judicial notice of the records of the Minnesota Secretary of State, which show that the state administratively dissolved CPE in 2016. *See* Minn. R. Evid. 201(b) ("A judicially noticed fact must be . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.")

On remand, the district court found that the IRS debt was the result of a failure to pay payroll taxes at a time when Buxengard was bookkeeping for CPE. The district court concluded that, because Buxengard was bookkeeping, “it is fair to hold her responsible for the business’s failure to pay payroll taxes.” The district court’s treatment of the IRS debt is supported by the record and adequate findings. Therefore, the district court acted within its discretion by splitting the IRS debt between Buxengard and Freking. *See Servin*, 345 N.W.2d at 758 (noting that this court will affirm a district “court’s division of property if it had an acceptable basis in fact and principle even though this court may have taken a different approach”).

**Affirmed.**